

Department of Planning and Budget 2018 Fiscal Impact Statement

1. Bill Number: SB 954

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Norment

3. Committee: Reported from committee

4. Title: Marijuana possession

5. Summary:

The proposed legislation would make numerous changes in the laws related to possession of marijuana and other illegal substances, as follows:

Marijuana Possession

Under current law, persons convicted of possession of marijuana are subject to a jail sentence of up to 30 days and a fine of up to \$500. A second or subsequent conviction is a Class 1 misdemeanor, for which a court could impose a sentence of up to 12 months in jail. The proposed legislation would eliminate the possibility of jail time for a first offense of marijuana possession.

Expungement of Court and Police Records

Currently, the only persons authorized to petition for expungement of police and court records are those: (i) who have been acquitted, (ii) for whom a *nolle prosequi* was taken, (iii) whose case was otherwise dismissed, (iv) whose name or other identification was used without his/her consent by another person who was charged and arrested using such name or identification, or (v) who have been granted an absolute pardon for a crime he/she did not commit. The proposed legislation would add to that list of authorized expungements persons charged with a first offense of possession of marijuana whose charges were deferred by the courts and, after the completion of conditions imposed by the court, subsequently dismissed.

For any expungement of the court and police records related to a charge of first offense of marijuana possession, the proposed legislation would require that the petitioner pay a \$300 fee, in addition to any other applicable court costs. Revenue from that fee would be divided equally between the Heroin and Prescription Opioid Epidemic Fund and a special fund authorized for the State Police. In addition, any costs assessed by the court clerk for the processing of the expungement petition would not be refunded, as is the case with other expungement orders.

The proposed legislation would provide that a charge of possession of marijuana that had been expunged due to it being a first offense and deferred and then dismissed would be deemed a conviction for purposes of prosecuting a person for a second or subsequent violation of the marijuana possession statute. Furthermore, the proposed legislation would provide that any person, whose police and court records for a deferred and dismissed first charge of marijuana possession had been expunged, could not be eligible for deferment and dismissal for a subsequent charge of possession of marijuana. Finally, the legislation would require, prior to any deferment proceedings, the attorney for the Commonwealth or law-enforcement officer provide to the court for review the criminal history record and any other records maintained by the Department of State Police to ensure that the person petitioning for deferment was eligible for the deferral.

Heroin and Prescription Opioid Epidemic Fund

The proposed legislation would create the Heroin and Prescription Opioid Epidemic Fund, to be administered by the Department of Criminal Justice Services. The source of moneys in the Fund would \$150 of the \$300 fee paid for each expungement of police and court records related to deferred and dismissed first time charges of possession of marijuana. The moneys in the Fund would be used solely for prevention, treatment, and recovery services relating to the use of heroin and prescription opioid drugs.

Possession of Marijuana Database

The proposed legislation would require the Department of State Police to establish a database of charges of possession of marijuana that had been expunged. The database would be separate and apart from all other records maintained by the agency. The agency would be authorized to make the database information available, upon request, to criminal justice agencies, including local law-enforcement agencies and attorneys for the Commonwealth, to be used solely for the purpose of administration of criminal justice.

- 6. Budget Amendment Necessary:** Indeterminate.
- 7. Fiscal Impact Estimates:** Preliminary. See Item 8.
- 8. Fiscal Implications:**

The proposed legislation would have fiscal implications for the following agencies:

Compensation Board

By eliminating the possibility of jail time for the first offense of possession of marijuana, the proposed legislation could result in a reduction in the \$4.00 per diem payments made by the Compensation Board to jails for housing persons awaiting trial and misdemeanants. Based on data provided by the Virginia Criminal Sentencing Commission, approximately 9,000 offenders were convicted annually in recent years, for whom the first-time possession of marijuana was the sole offense. Of those offenders, approximately 940 received a jail

sentence, with the median sentence being 10 days. Therefore, under the provisions of the proposed legislation, the Compensation Board would save approximately \$37,600 in per diem payments annually.

State Police

There could be a fiscal impact on the State Police in two areas:

Database

The legislation would require the State Police to develop and maintain a database of expunged charges of first possession of marijuana that were deferred and dismissed. The agency estimates that the one-time cost of developing this program would be \$100,000.

Expungements

After receiving a copy of a petition for expungement, the Central Criminal Records Exchange of the Virginia State Police is required to forward to the court a copy of the petitioner's criminal history, the source documents that resulted in the entry that the petitioner wishes to expunge, and a set of fingerprints. After a court has entered an order for expungement, the State Police are responsible for carrying out the expungement in accordance with regulations adopted by the Criminal Justice Services Board.

The proposed legislation, expanding the categories of persons eligible to petition for expungement, will result in an increase in workload for the State Police, but it is not feasible to estimate the extent of that increase. The State Police estimate that there are approximately 27,000 persons in the Commonwealth that potentially may be eligible to petition for expungement upon the effective date of the proposed legislation; that is, they had the charge of their first offense of marijuana deferred and dismissed in previous years. However, it is not known how many of those persons would petition for expungement.. Furthermore, if a petitioner for expungement has a prior criminal record, the court has the discretion to deny a petition.

In addition to this large number of persons who had their charges of marijuana possession deferred and dismissed in previous years, the State Police estimate that there would be an additional 2,250 such cases annually going forward. It is also cannot be known how many requests for expungement would be filed by people in this group.

According to the State Police, the section that now handles expungements has eight members who process approximately 4,000 expungement petitions annually, for an average of 500 per staff member. To process the additional petitions in a timely fashion, the agency would need additional staff to avoid a lengthy backlog of requests. The total annual cost of a program technician in the unit is \$69,575. Of the \$300 additional fee the proposed legislation would require be collected for each expungement of the records of a deferred and dismissed first-time marijuana charge, \$150 would be dedicated to the State Police and could be used to offset the costs of implementing the legislation. Until there is data available on

the number of expungements that would result from the legislation, it cannot be known whether that additional revenue will be sufficient to offset any additional costs.

Department of Criminal Justice Services

Under the provisions of the proposed legislation, the Criminal Justice Services Board would have the responsibility of promulgating regulations to implement, and the Department of Criminal Justice Services (DCJS) the responsibility to administer, the Heroin and Prescription Opioid Epidemic Fund grant program. The provisions of the legislation establishing the Fund and imposing the \$300 fee, half of which would provide the revenue for the Fund, would not become effective until January 1, 2019. Therefore, although it is not possible now to project the number of additional expungement petitions that would from the legislation and, thus, the flow of revenue into the Fund, it is likely that there would not be a sufficient balance in the Fund to begin making grants until the 2020-2022 biennium. Depending on the size of the balance and the number of grants that could be made, DCJS may need an additional staff member to administer the program.

Courts

Expungement petitions are required to be filed in the circuit court of the county or city in which the original case was heard. After receiving the criminal history record information of the petitioner, the court is required by current law to conduct a hearing on the petition. However, if (i) the petitioner has no prior criminal record, (ii) the arrest or charge was for a misdemeanor, and (iii) if the attorney for the Commonwealth does not object, the petitioner shall be entitled to expungement and the court may issue an order to such an effect without a hearing.

The proposed legislation would result in an increase in the workload of the courts in the form of additional expungement petitions to consider. However, because it is not feasible to project how many additional petitions would be filed nor how many of these petitions would require a hearing, it is not possible to estimate the extent of this increase or the fiscal impact.

9. Specific Agency or Political Subdivisions Affected:

Virginia State Police
Department of Criminal Justice Services
Compensation Board
Circuit and district courts
Attorneys for the Commonwealth

10. Technical Amendment Necessary: None.

11. Other Comments:

The provisions of the legislation regarding the penalties for possession of marijuana would be effective July 1, 2018. The provisions relating to expungement of police and court

records would be effective January 1, 2019. Finally, there is a separate enacting clause making the provisions of the legislation contingent upon the inclusion of an appropriation in the budget bill effectuating its purposes.